

Ruling 91-04

Vermont Department of Taxes

Date: June 4, 1991

Written By: Joyce Errecart, Commissioner of Taxes

On behalf of your client, you have requested a ruling concerning the application of Vermont's sales and use tax to double-wide mobile homes. This ruling relies on factual representations contained in your letter of May 10, 1991 to Gloria Hobson of the Business Taxes Division.

Your client manufactures single and double-wide mobile homes which are sold throughout the United States. A Vermont mobile home dealer customarily picks up mobile homes at your client's business in [State]. The Vermont dealer uses his own transportation which is driven by his employee and title to the mobile home passes to the Vermont dealer in [State]. These mobile homes may be purchased as part of the Vermont dealer's inventory or as a special order for a customer. In some cases, (Sale A), the Vermont dealer affixes a double-wide on the customer's own land where the foundation and utilities have been installed. The dealer places the unit on the foundation, attaches the two halves, completes interior finish work and connects the utilities. In other cases, (Sale B), the dealer affixes a double-wide to a lot the customer has leased, or (Sale C), the dealer sells the double-wide to the customer and the customer arranges to have the unit installed.

You raise four questions:

1. Under the three sales situations presented in the facts, is the dealer liable for Vermont use tax or is the customer liable for Vermont sales tax?

The dealer is liable for use tax in Sales A and B, in which it installs the mobile home, since the dealer is acting as a contractor. Sales of tangible personal property to a contractor for use in Vermont "in erecting structures for others, or ...improving real property of others" are deemed retail sales. 32 V.S.A. § 9701(5). Where the dealer paid no sales tax on the mobile home, it is liable for Vermont use tax. 32 V.S.A. § 9773(1).

The customer is liable for the sales tax in Sale C, and the dealer responsible for collecting and remitting the tax paid by the customer. 32 V.S.A. §§ 9701(5), 9776. However Vermont exempts from sales and use tax forty percent of the receipts from sales of mobile or modular housing units. 32 V.S.A. § 9741(32).

2. If the Vermont dealer is subject to Vermont use tax, is there a credit for [State] sales tax paid? Yes, if a tax had been paid to [State] at the time of the Vermont dealer's obligation to remit Vermont tax.

The Vermont dealer is allowed a credit against the Vermont use tax for any retail sales or use tax legally due and paid to another state, if that state allows a corresponding credit. When that state's sales and use tax is lower than Vermont's tax, the use tax rate is the difference between the two rates. 32 V.S.A. § 9744(3). Since the Vermont dealer had not paid the [State] sales tax when the Vermont dealer's liability to pay Vermont use tax arose, no credit for [State's] taxes is allowable.

Use tax is reported with the business's regularly scheduled sales and use tax return. These returns are filed on a monthly or quarterly basis and are due by the 25th day of the month after the reporting period. 32 V.S.A. § 9775.

3. Will Vermont refund any Vermont tax paid by the dealer based on a credit for [State] tax if: a. the Vermont dealer was recently billed for [State] tax on sales made two to three years ago; and, b. the Vermont dealer has remitted the use tax to Vermont or collected and remitted the sales tax to Vermont? No. A refund is only allowed for tax erroneously, illegally or unconstitutionally collected or paid to the State of Vermont. 32 V.S.A. § 9781(a). The use tax was not erroneously, illegally or unconstitutionally collected or paid. Therefore, no refund will be allowed.

Vermont cannot refund sales tax collected by the dealer as a credit for [State] tax paid by the dealer. The sales tax collected from the Vermont customer is due from the customer. The customer's tax obligation cannot be offset by a tax paid and due from the dealer.

4. What statute of limitation is applicable to refund claims? A refund must be applied for within three years from the payment. 32 V.S.A. § 9781(a).

This ruling is issued solely to your firm and is limited to the facts presented as affected by the statutes and regulations in force at this time. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.